

3. Imputation Test Required

ILECs shall submit an imputation test, for the Commission staff's review and the Commission's approval, if:

- a. Tariffs are filed by the ILEC to introduce a new service subject to imputation requirements;
- b. Tariffs are filed by the carrier to reduce rates for a service subject to imputation requirements; or
- c. Tariffs are filed by the carrier to increase rates for an essential input which is utilized in providing a competitive service subject to the imputation requirements as described above.

4. Imputation Filing

The ILEC shall file, as an attachment to its tariff filing, information regarding the ILEC's method of complying with the imputation standards, including but not limited to, its definition of "relevant market or geographic area", and the definition of "the essential input or non-competitive service" relevant to the service in its application.

VI. TARIFFING REQUIREMENTS

A. Structure

All LECs shall maintain end user tariffs. In addition, LECs providing service through their own facilities shall maintain a carrier-to-carrier tariff in those service areas. The carrier-to-carrier tariff shall include services, features, and functionalities for purchase by any certified carrier, subject to conditions set forth in Section VI.C.1., below.

B NEC Affiliation with CTS Providers

CTS providers affiliated with NECs can retain 563 regulation of their competitive services provided pursuant to 563, if the NEC and CTS providers are separate affiliates and comply with the affiliate transaction guidelines in 563, Case No. 86-2173-TP-ACE, and Case No. 93-1081-TP-UNC, as subsequently amended or supplemented in orders of the Commission. Otherwise, all NEC services will be regulated according to the procedures set forth in these guidelines.

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission In-)
 vestigation Into the Implementation)
 of Sections 4927.01 Through 4927.05,) Case No. 89-563-TP-COI
 Revised Code, as They Relate to Com-)
 petitive Telecommunication Services.)

ENTRY ON REHEARING

The Commission finds:

- 1) On October 22, 1993, the Commission issued a Finding and Order in this matter which, among other things, adopted a new regulatory framework for the provision, within Ohio, of competitive telecommunication services by entities other than local exchange companies (563 guidelines), with an effective date of December 27, 1993. The October 22, 1993 Finding and Order also granted to providers of cellular, paging, and mobile services a temporary waiver, until December 31, 1997, of the tariff and contract filing requirements set forth in the 563 guidelines relating to their provision of such services to their customers.
- 2) On November 22, 1993, AT&T Communications of Ohio, Inc. (AT&T); GTE Mobilnet of Ohio Limited Partnership, GTE Mobilnet Incorporated, and Ohio RSA #3 Limited Partnership (collectively, GTE Mobilnet); International Telecharge, Inc. dba Oncor Communications, Inc. (Oncor); The New Par Companies¹ (New Par); RAM/BSE Paging Company, L.P. (RAM/BSE); Sprint Communications Company L.P. (Sprint); USA Mobile Communications, Inc., II (USA Mobile); Westside Cellular, Inc., dba Cellnet (Cellnet); and the Youngstown Cellular Telephone Company (YCTC) filed applications for rehearing of the Commission's order, pursuant to Section 4903.10, Revised Code. YCTC incorporates by reference the arguments set forth by New Par and, there-

1. The New Par Companies consist of the Akron Cellular Telephone Company, Canton Cellular Telephone Company, Columbus Cellular Telephone Company, Dayton Cellular Telephone Company, Hamilton Cellular Telephone Company, Northern Ohio Cellular Telephone Company, Southern Ohio Telephone Company, Springfield Cellular Telephone Company, and the Toledo Cellular Telephone Company.

4905.26, Revised Code, will be handled according to the procedural standards set forth in Chapters 4901-1 and 4901-9, O.A.C.

- b. In the interest of expediting the formal complaint process, a procedural entry will be issued by either the Commission, Legal Director, Deputy Legal Director, or Attorney Examiner within 60 days of the filing of a complaint.

2. Informal

Each CTS provider must provide to the Commission's Consumer Services Department the name and telephone number of a contact person to assist the Commission staff with the resolution of informal complaints.

J. Notification in General

In addition to the customer notice requirements specified herein, the Commission reserves the right to require, review, and approve customer notices for certain services which are determined by the Commission to present public policy ramifications.

K. Affiliated Transactions

- 1. CTS providers affiliated with LECs operating in Ohio must comply with the following restrictions:
 - a. The majority of the CTS provider's directors must not also be directors or employees of the involved LEC. In addition, the LEC must employ separate officers and personnel, and all benefits which the CTS provider and the involved LEC provide to their respective employees must be accounted for and paid for by their respective employers;
 - b. The CTS provider must operate as a totally separate entity from the involved LEC and shall not receive technical resources and equipment from the LEC, unless such resources and equipment are also made available to any unaffiliated provider of functionally similar services or equipment under like conditions by the involved LEC;
 - c. The CTS provider may contract for the provision of various services and equipment with the involved LEC, but the CTS provider: must

not contract for the provision of any service or equipment that is not also made available by the involved LEC to any unaffiliated provider of functionally similar services or equipment; must reduce the transaction to writing; must include in the contract all the material terms; must execute the contract prior to or simultaneously with the transaction; and must file the contract with the Commission as required;

- d. A CTS provider purchasing services from its LEC affiliate shall do so from the tariffs and according to the terms stated in the LEC affiliate's tariffs. In those instances where the CTS provider requests service pursuant to tariffs providing for individual contract pricing, or any other form or method of flexible pricing that is available to the involved LEC's customers generally, the CTS provider shall obtain those services at rates and terms no more favorable than those available to any unaffiliated provider of functionally similar services or equipment;
- e. The CTS provider must maintain separate accounting records from the involved LEC, and must satisfy its debts to that LEC in the same manner as available to other entities under like conditions; and
- f. The CTS provider shall not receive from the involved LEC any proprietary information, other than that information that is made available at the same interval to any unaffiliated provider of functionally similar services or equipment.

2. Resale Affiliates of Wholesale Cellular Providers

- a. A cellular reseller, which is affiliated with the wholesale cellular CTS provider and which is not involved in any manner with routing, transmitting, receipt of signals, or conversion of signals, will not be considered a CTS provider or telephone company simply by virtue of that affiliation, provided that the affiliated reseller's operations are maintained under a separate set of accounting records from the operations of the wholesale cellular provider, and further provided the affiliated reseller has no involvement whatsoever in the wholesale cellular CTS provider's operations.

It is, therefore,

ORDERED, That the applications for rehearing filed by AT&T Communications of Ohio, Inc.; GTE Mobilnet of Ohio Limited Partnership, GTE Mobilnet Incorporated, and Ohio RSA #3 Limited Partnership; International Telecharge, Inc. dba Oncor Communications, Inc.; The New Par Companies; RAM/BSE Paging Company, L.P.; Sprint Communications Company L.P.; USA Mobile Communications, Inc., II; Westside Cellular, Inc., dba Cellnet; and the Youngstown Cellular Telephone Company are granted in part, and denied in part, as set forth in this entry and attached rules. It is, further,

ORDERED, That a copy of this entry on rehearing be served upon all telephone companies operating in this state; The Ohio Telephone Association; The Office of the Consumers' Counsel; The Ohio Farmer's Union; The Ohio Farm Bureau; the Ohio Association of Realtors; The American Association of Retired Persons; The Ohio Manufacturers Association; the Ohio Cable Television association; the members of the Telecommunications Advisory Council; The Ohio Public Communications Association; the cities of Cleveland, Columbus, Toledo, Akron, and Cincinnati; all entities with pending telecommunication applications; all other persons or entities who have filed pleadings in this docket; all persons or entities who have filed pleadings in Case Nos. 88-560-TP-COI, 92-1149-TP-COI, 87-206-TP-COI, and 91-113-TP-COI; and upon all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Craig A. Glazer, Chairman - *Abtain*
J. Michael Biddison J. Michael Biddison *Jolynn Barry Butler* Jolynn Barry Butler
Richard M. Fanelly Richard M. Fanelly *David W. Johnson* David W. Johnson
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Entered in the Journal

DEC 22 1993

A True Copy

Gary E. Vigorito
 Gary E. Vigorito
 Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application)
of United Telephone Long Distance,)
Inc. for Authority to Furnish) Case No. 86-2173-TP-ACE
Interexchange Telecommunication)
Services within the State of Ohio.)

FINDING AND ORDER

The Commission, considering the application filed by United Telephone Long Distance, Inc. on November 17, 1986, as supplemented by subsequent filings, the initial hearings held on December 9, 1987, through December 21, 1987, the rebuttal hearing held on January 27, 1988, the initial briefs and reply briefs filed by the parties on February 24, 1988, and March 15, 1988, respectively, and having determined that this matter should proceed directly to Finding and Order without the issuance of an Attorney Examiner's Report, issues its Finding and Order.

APPEARANCES:

Ms. Ellen A. D'Amato and Mr. John A. Rozic, P.O. Box 3555, Mansfield, Ohio 44907, and Squire, Sanders & Dempsey, by Mr. Arthur P. Korkosz, 1800 Huntington Building, Cleveland, Ohio 44115, on behalf of United Telephone Long Distance, Inc.

Emens, Hurd, Kegler & Ritter, by Mr. Samuel C. Randazzo and Mr. Michael E. Scoliere, 65 East State Street, Columbus, Ohio 43215, on behalf of Litel Telecommunications Corporation.

Ms. Stephanie D. Pestello, 180 East Broad Street, Suite 200, Columbus, Ohio 43215, on behalf of MCI Telecommunications Corporation.

Bell & Bentine Co., L.P.A., by Mr. John W. Bentine and Ms. Judith B. Sanders, 33 South Grant Avenue, Columbus, Ohio 43215, on behalf of Allnet Communication Services, Inc.

Muldoon, Pemberton & Ferris, by Mr. Boyd B. Ferris, 2733 West Dublin-Granville Road, Worthington, Ohio 43085, on behalf of Grace Communications, Inc., dba Afford-A-Call.

Mr. William A. Spratley, Consumers' Counsel, by Ms. Evelyn R. Robinson and Mr. Bruce Weston, 137 East State Street, Columbus, Ohio 43266-0550, on behalf of the Office of Consumers' Counsel.

to enhance the reputation and image of the company, the costs of that advertising are paid for by UTO's shareholders and not its ratepayers, because all intangible assets, including corporate and institutional advertising, have been disallowed for ratemaking purposes by the Commission. He emphasized that, by virtue of the regulatory safeguards established by the Commission, the ratepayers are assured of paying only reasonable rates for the services provided to them by UTO. Furthermore, Mr. Trawicki contended that UTO's shareholders and not UTO's ratepayers bear the risk of loss associated with UTO's formation of UTLD (UTLD Ex. 13 at 4-7).

Mr. Trawicki testified that the imposition of a royalty fee for the alleged intangible benefits is an arbitrary measure of the value which UTLD receives as a result of its affiliation. If the fee were to be based on gross revenues, as Mr. Ostrander suggested, Mr. Trawicki believes that it would not bear any relationship to the cost or the value of the alleged intangible benefits because such a methodology presumes that the value of the intangible benefits is variable in nature and that the value would change along with the revenues (UTLD Ex. 13 at 9).

III. CONCLUSION:

After thoroughly reviewing all of the testimony and exhibits in this matter, the Commission finds that the close affiliation between UTLD and its parent company UTO creates a potential for cross-subsidization and anti-competitive practices to occur between the two companies, which would be detrimental to the customers of UTO and, therefore, is not in the public interest. However, the Commission believes that, by requiring UTLD and UTO to maintain operations that are structurally separate, the potential for these detrimental practices to occur will be minimized, if not eliminated. Therefore, the Commission concludes that UTLD's application for authority to furnish intrastate inter-exchange telecommunication services in Allen, Auglaize, Champaign, Clinton, Columbiana, Crawford, Darke, Defiance, Delaware, Fulton, Hancock, Henry, Knox, Licking, Logan, Lucas, Madison, Mahoning, Mercer, Miami, Morgan, Morrow, Muskingum, Ottawa, Perry, Pickaway, Portage, Preble, Putnam, Richland, Sandusky, Seneca, Shelby, Trumbull, Van Wert, Warren, Wayne, Williams, and Wood Counties, Ohio, should be granted, contingent upon UTLD's and UTO's compliance with the conditions set forth below.

UTLD contends that the use of common operational and managerial resources between UTO and UTLD is beneficial not only to UTLD, but to UTO's customers as well, for a number of reasons one of which is the ability of UTO to spread some of its fixed costs to UTLD. However, the Commission believes that the potential for abuse of this type of structure, especially between

two regulated utilities, one of which is an LEC with a monopoly position in its franchised service area, far outweighs any nominal benefits which may or may not ever be realized by either company and their customers. In order to ensure against abuse of UTO's and UTLD's affiliation, it is essential that the two companies operate as totally separate and independent entities. To accomplish this, UTLD and UTO must employ separate directors, officers, and personnel. All benefits, which UTLD and UTO provide to their respective employees, including, but not limited to, vacations and other leave, pensions, social security, and workmen's compensation, must be accounted for and paid for by their respective employer. Additionally, UTO must not share its technical resources and equipment, including, but not limited to, office furniture, data systems, central office equipment and space, and other facilities, with UTLD, unless such resources and equipment are also made available to other IXC's under like conditions.

The Commission believes that, as a structurally separate entity, UTLD should be allowed to contract with UTO for the provision of various services and equipment, provided that such contracts are negotiated on an arms length basis. UTLD may not, however, contract with UTO for the provision of any service or equipment which is not also made available by UTO to other IXC's. All transactions entered into between UTLD and UTO must be reduced to writing and all of the material terms must be contained in the contracts. The contracts must be executed prior to or simultaneously with the transaction.

The Commission finds that inherent in the structural separation of these two companies' operations is the requirement that UTLD and UTO must maintain separate accounting records of their operations' revenues and expenditures. The Commission finds UTO's practice of issuing checks to satisfy UTLD's debts to be contrary to this requirement. Therefore, in the future, UTLD must satisfy its own debts and the payment of any monies owed by UTLD to UTO must be satisfied in cash.

Sections 4905.40 through 4905.42, Revised Code, govern the issuance of notes by public utilities subject to the Commission's jurisdiction. Generally, prior approval by this Commission is required for all proposed issues of debt securities by a public utility where the purpose of the issuance is to finance capital improvements, to reorganize the capital structure, to refund certain obligations incurred, or to acquire the stock of another public utility. The record in this case reflects that UTLD received both debt and equity advancements from UTO. However, UTLD has failed to file the necessary request for prior approval of those issuances with the Commission. Accordingly, UTLD should file an application to issue stocks or securities (AIS) with the

Commission. The authority granted in this Order shall be contingent upon the Commission's prior approval of UTLD's AIS application.

Additionally, Commission finds that UTO must not provide UTLD with any proprietary information, other than that information which is also made available to other IXCs. The record reflects that UTO has instituted procedures to guard against any disclosure of proprietary information to an inappropriate entity and the structural separation of these companies set forth in this Order will eliminate many of the opportunities, which UTLD has had in the past to access UTO's proprietary information. However, due to the sensitive nature of this information in a competitive environment such as the long distance market, the Commission believes that it is important for it to mandate expressly that UTLD has no opportunity in the future to obtain such information.

Furthermore, it is necessary for the Commission to determine whether or not its grant of interexchange authority, even with certain contingencies, should be restricted to allow UTLD to provide only interLATA interexchange services, as agreed upon by the parties in the stipulation filed with the Commission on December 17, 1987. Rule 4901-1-30, Ohio Administrative Code, provides that any two or more parties may enter into a written stipulation concerning the issues presented in a case. Although the Commission does not have to accept the stipulation, the Commission has taken the position that an agreement among all the parties is entitled to great weight. After review of the stipulation offered by the parties, and the arguments set forth by the parties on the record, the Commission concludes that the stipulation should be adopted. Therefore, UTLD's interexchange authority shall be restricted to the provision of interLATA interexchange services and the Certificate of Public Convenience and Necessity issued to UTLD pursuant to this Order shall so state. If, in the future, UTLD wishes to obtain authority to provide intraLATA interexchange services, it must file with the Commission an application for certificate (ACE) requesting such.

The Commission believes that, as long as UTLD maintains structurally separate operations, as mandated by this Order, it is not necessary to restrict the marketing and advertising strategies employed by UTLD. Furthermore, the Commission finds that, by requiring UTO and UTLD to maintain separate operations, it is not necessary to mandate that UTLD pay UTO a royalty fee. It is the Commission's position that, the requirements set forth in this Order will minimize, if not eliminate, any concerns that cross-subsidization, anti-competitive practices, or creamskimming will occur between UTLD and UTO.

Accordingly, UTLD should file affidavits, signed by two officers of UTLD, i.e. the president or vice-president, and the secretary or treasurer, with the Commission attesting to its compliance with all of the contingencies for the structural separation of UTLD and UTO as set forth in the conclusion to this Order. Upon receipt of these affidavits, and the Commission's approval of UTLD's AIS application, the Commission shall issue a certificate to United Telephone Long Distance, Inc., authorizing it to furnish intrastate interLATA interexchange telecommunication services in Allen, Auglaize, Champaign, Clinton, Columbiana, Crawford, Darke, Defiance, Delaware, Fulton, Hancock, Henry, Knox, Licking, Logan, Lucas, Madison, Mahoning, Mercer, Miami, Morgan, Morrow, Muskingum, Ottawa, Perry, Pickaway, Portage, Preble, Putnam, Richland, Sandusky, Seneca, Shelby, Trumbull, Van Wert, Warren, Wayne, Williams, and Wood Counties, Ohio, contingent upon UTLD's continued compliance with this Order.

UTLD further seeks to establish rules, regulations, and rates governing the proposed services. After inspecting the proposed tariff, as revised and filed on November 18, 1988, the Commission concludes that the tariff should be approved, effective upon either, the date the Commission approves UTLD's AIS application, the date UTLD files its affidavits attesting to its compliance with the directives in this Order, or the date upon which three copies of the approved tariff are filed with the Commission, whichever date is later.

As a final matter, the Commission finds that it is unnecessary for it to rule on Litel's January 23, 1987 motion, as supplemented, which requested that the Commission revoke UTLD temporary authority to operate in the initial seventeen counties, due to the conclusion reached in this case, the motion is moot.

It is, therefore,

ORDERED, That the proposed transcript corrections filed on January 20 and 28, February 4, 11, and 12, and March 4, 1988, are accepted and incorporated into the record. It is, further,

ORDERED, That the intervenors' joint motion to strike filed on June 22, 1988, is denied. It is, further,

ORDERED, That Litel's November 25, 1988 motion requesting that oral arguments be held in this case is denied. It is, further,

ORDERED, That those documents of record that are subject to the protective orders signed by the necessary persons in this case will be kept under seal by this Commission. It is, further,

ORDERED, That the stipulation filed by the parties on December 17, 1987, is accepted. It is, further,

ORDERED, That UTLD file an application to issue stocks or securities with the Commission. It is, further,

ORDERED, That UTLD file affidavits with the Commission attesting to its compliance with all of the contingencies set forth in the conclusion of this Order. It is, further,

ORDERED, That the application of United Telephone Long Distance, Inc. is approved, and that, upon receipt of the necessary affidavits, and the Commission's approval of UTLD's AIS application, a certificate be issued to UTLD, authorizing it to furnish intrastate interLATA interexchange telecommunication services in Allen, Auglaize, Champaign, Clinton, Columbiana, Crawford, Darke, Defiance, Delaware, Fulton, Hancock, Henry, Knox, Licking, Logan, Lucas, Madison, Mahoning, Mercer, Miami, Morgan, Morrow, Muskingum, Ottawa, Perry, Pickaway, Portage, Preble, Putnam, Richland, Sandusky, Seneca, Shelby, Trumbull, Van Wert, Warren, Wayne, Williams, and Wood Counties, Ohio, contingent upon UTLD's continued compliance with this Order.

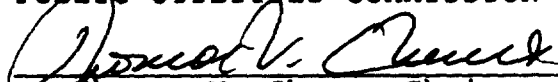
ORDERED, That UTLD's proposed tariff, as revised and filed on November 18, 1988, is approved, to become effective upon either the date the Commission approves UTLD's AIS application, the date UTLD files its affidavits attesting to its compliance with the directives in this Order, or the date upon which three copies of the approved tariff are filed with the Commission, whichever date is later. It is, further,

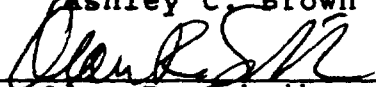
ORDERED, That Litel's January 23, 1987 motion, as supplemented, which requested that the Commission revoke UTLD temporary authority to operate in the initial seventeen counties, is deemed moot. It is, further,

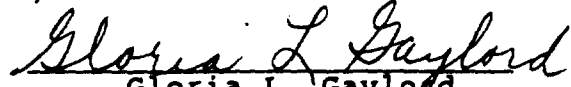

ORDERED, That nothing in this Finding and Order is binding upon this Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That copies of this Finding and Order be served upon United Telephone Long Distance, Inc.; Litel Telecommunications Corporation; Allnet Communications Services, Inc.; the Office of the Consumers' Counsel; MCI Telecommunications Corporation; Grace Communications, Inc., dba Afford-A-Call; their respective counsel; and upon all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Thomas V. Chema, Chairman

Ashley C. Brown

Alan R. Schriber



Gloria L. Gaylord

Lenworth Smith, Jr.

CMTP/vrt

Entered in the Journal

7 DEC 1988

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Patricia M. Angel
Acting Secretary